



Labour Department

Statutory Minimum Wage – Rights of Employees with Disabilities and Productivity Assessment

✧ **Rights of employees with disabilities under the statutory minimum wage regime**

The Minimum Wage Ordinance (“MWO”) has come into force since 1 May 2011 and statutory minimum wage (“SMW”) applies to employees with disabilities and able-bodied employees alike. Therefore, employees with disabilities are also entitled to wages at not lower than the SMW rate. Taking account of the possible employment difficulties encountered by some employees with disabilities, a special arrangement is provided under the SMW legislation so that employees with disabilities whose productivity may be impaired by their disabilities are entitled to choose to have their productivity assessed and be remunerated at a rate commensurate with their productivity. For employees with disabilities who do not opt to undergo productivity assessment (“assessment”), their employers must pay them at not lower than the SMW rate.

❖ **Flow chart of the productivity assessment for employees with disabilities** ❖

The employee with disabilities must hold a valid “Registration Card for People with Disabilities” issued by the Central Registry for Rehabilitation of the Labour and Welfare Bureau when invoking the assessment.



The employee with disabilities may, before commencing employment, agree with the employer to undergo a trial period of employment of not more than 4 weeks to adapt and settle into the work before undergoing assessment. The wage level during the trial period of employment as agreed between the employee with disabilities and the employer should not be lower than 50% of the SMW rate.



The employee with disabilities contacts the approved assessor to be selected from the “Register of Approved Assessors” of the Labour Department to conduct the assessment ^{Note 1}.



The approved assessor conducts the assessment in the actual workplace of the employee with disabilities, collects detailed information on the work and selects appropriate factors to be considered and suitable methods of assessment.



The approved assessor explains the assessment result and issues the “Certificate of Assessment on the Degree of Productivity” to the employee with disabilities and the employer. The fee of the approved assessor is borne by the Labour Department.

Note 1: The “Register of Approved Assessors” can be browsed through the homepage (<http://www.labour.gov.hk>) and at the following offices of the Labour Department:

Statutory Minimum Wage Division: 1/F, Harbour Building, 38 Pier Road, Central, Hong Kong

Selective Placement Division:

Hong Kong office: G/F, East Wing, Harbour Building, 38 Pier Road, Central, Hong Kong

Kowloon office: G/F, Ngau Tau Kok Government Offices, 21 On Wah Street, Ngau Tau Kok, Kowloon

NT office: 2/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, NT

✧ **Wage level of employees with disabilities after productivity assessment**

With the completion of assessment and from the first day after the “Certificate of Assessment on the Degree of Productivity” (“certificate”) is countersigned by the employee with disabilities and the employer, the employer should pay the employee with disabilities at no less than a wage rate commensurate with the degree of productivity stated in the certificate, viz.:

$$\begin{array}{l} \text{Minimum wage level that} \\ \text{employer should pay to} \\ \text{employee with disabilities} \\ \text{after assessment} \end{array} = \begin{array}{l} \text{Assessed degree of productivity} \\ \text{stated in the certificate} \end{array} \times \text{SMW rate}^{\text{Note 2}}$$

Note 2: To be adjusted in future with the latest SMW rate in force.

✧ **Transitional arrangement for employees with disabilities prior to the implementation of the Minimum Wage Ordinance**

Serving employees with disabilities who have elected the transitional arrangement under the MWO by completing and signing jointly with their employers before 1 May 2011 the “Option Form” specified by the Labour Department may at any time invoke the assessment (viz. to contact the approved assessor to be selected from the “Register of Approved Assessors” of the Labour Department to conduct the assessment as stated in the aforesaid flow chart of the assessment), having regard to their individual circumstances and needs. Before the completion of assessment, these serving employees with disabilities may retain their original wage rate. Adjustment of the SMW rate in the interim will also be applicable to them. After the assessment, their wage level will be determined in accordance with the degree of productivity stated in the certificate.

✧ **Comments on the implementation of the productivity assessment mechanism from stakeholders**

The productivity assessment mechanism provided for employees with disabilities under the SMW regime is the fruit of extended discussions between the Government and the stakeholders. It has been operating smoothly since its implementation. Some employees with disabilities who have undergone assessments opine that the assessment mechanism can help preserve and enhance their employment opportunities. As regards employers, an employer from the catering industry comments that the assessment mechanism facilitates employers to continue employing persons with disabilities; and employers from educational services and laundry services also find the assessment mechanism appropriate and the procedures of assessment not complex. Comments on the implementation of the assessment mechanism received from some representatives of relevant organisations are also quoted below :

Mr Cheung Kin-fai, the then Chairperson of the Hong Kong Joint Council for People with Disabilities:

“We note that many organisations are employing persons with disabilities with wages at not lower than SMW. Notwithstanding this, persons with disabilities whose productivity may be impaired by their disabilities are given an option to undergo assessment and be remunerated at a rate commensurate with their productivity so that the possible impact on their job opportunities upon implementation of SMW could be minimised.”

Ms Deborah Wan, Vice-Chairperson of the Hong Kong Joint Council for People with Disabilities:

“Working abilities of many persons with disabilities are on par with their able-bodied counterparts. A lot of enterprises are enthusiastic in employing persons with disabilities at not less than the SMW rate upon the implementation of SMW. In general, employees with disabilities who have undergone the assessment and their employers respond positively to the assessment mechanism and consider its procedures not complicated at all.”

Mrs Julie LEE, Executive Committee Member of the Parents' Association of Pre-school Handicapped Children:

“To many persons with disabilities and their parents, job opportunities are important whilst salary level is sometimes regarded as a secondary consideration. The productivity assessment mechanism aims not only to allow employees with disabilities to be remunerated at wages commensurate with their productivity but also to encourage employers to employ more persons with disabilities so as to enhance their employment opportunities.”

Mr Aldan KWOK, the then General Secretary of the Hong Chi Association:

“Determining wage level by degree of productivity facilitates access to open employment for people with different extent of intellectual disabilities. The assessment is to determine the productivity of employees with disabilities in performing the work concerned, having regard to their actual work performance. Employers need not refrain from hiring persons with disabilities out of concerns over the assessment procedures. As an employer, Hong Chi Association finds the assessment satisfactory and considers it should be fully supported.”

Ms Christina KAN, the then Superintendent of the Tung Wah Group of Hospitals Jockey Club Complex:

“Persons with disabilities have different working abilities and with suitable job matching, they can also give full play to their strength and contribute to society. For employees with productivity impaired by their disabilities, the assessment mechanism helps preserve their opportunities in joining the labour market. On the other hand, employers can also have more choices in recruiting employees.”

Ms Candy SHUM, the then Chief Officer (Service) of the Mental Health Association of Hong Kong:

“The approved assessors conducting productivity assessment for employees with disabilities are all experienced in vocational rehabilitation or other services in relation to the employment of persons with disabilities and their overall quality is good. Some approved assessors who have performed assessment remark that they have good grasp of the procedures and skills of conducting assessment and the process has been very smooth.”

✧ **Enquiries on the productivity assessment mechanism for employees with disabilities**

Enquiry Hotline : 2717 1771 (the 24-hour hotline is handled by “1823”)

E-mail : enquiry@labour.gov.hk

Fax : 3101 4705

Labour Department’s homepage : <http://www.labour.gov.hk>